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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

13 PEOPLE OF THE STATE OF
14 CALIFORNIA, by and through DENNIS
15 J. HERRERA, City Attorney for the CITY
AND COUNTY OF SAN FRANCISCO,

16 Plaintiff,

17 vs.

18 CHOPPER CITY, a criminal street gang,
sued as an unincorporated association,
19 EDDY ROCK, a criminal street gang,
sued as an unincorporated association,
20 KNOCK OUT POSSE, a criminal street
gang, sued as an unincorporated
21 association, and DOES 1 THROUGH 500,

22 Defendants.

Case No. 464-493

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S EX PARTE APPLICATION
FOR ORDER TO SHOW CAUSE RE:
PRELIMINARY GANG INJUNCTION

Hearing Date: July 12, 2007
Hearing Judge: Busch
Time: 11:00 a.m.
Place: Department 301

Date Action Filed: June 21, 2007
Trial Date: Not yet set

Attached Exhibits:
(A) Map of two Safety Zones;
(B) List of gang members designated for
service.

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1 **INTRODUCTION**

2 Plaintiff PEOPLE OF THE STATE OF CALIFORNIA brings this *Ex Parte* Application for an
3 Order to Show Cause re: Preliminary Injunction against Defendants CHOPPER CITY Criminal Street
4 Gang, EDDY ROCK Criminal Street Gang, KNOCK OUT POSSE Criminal Street Gang, their members,
5 officers, agents, and representatives (collectively, "Defendants") to enjoin Defendants from continuing to
6 operate their criminal enterprise in a manner constituting a public nuisance, to the detriment of the
7 surrounding community, in violation of California Civil Code sections 3479 and 3480 and Business and
8 Professions Code section 17200.

9 Plaintiff seeks a judicial determination that Defendants and their members have created a public
10 nuisance within each gang's territory in the Western Addition Neighborhood of San Francisco. Plaintiff
11 requests the Court to enjoin Defendants and their members from engaging in their nuisance-causing
12 conduct, effectively turning each defendant's gang territory into a nuisance-free "Safety Zone."

13 Plaintiff brings this Application pursuant to California Code of Civil Procedure §§ 527 and 731,
14 California Rules of Court 3.1200 et seq., California Civil Code §§ 3479, 3480, and 3491, and California
15 Business and Professions Code §§ 17200-17210.

16 **STATEMENT OF FACTS**

17 Defendants CHOPPER CITY, EDDY ROCK, and KNOCK OUT POSSE are violent, turf-based
18 criminal street gangs based in the Western Addition neighborhood of San Francisco.¹ Defendants
19 CHOPPER CITY and KNOCK OUT POSSE claim the geographical areas bordered by, and including,
20 Ellis Street to the North, Steiner Street to the East, Turk Street to the South, and Divisadero Street to the
21 West (hereinafter referred to as the "Chopper City/KOP Safety Zone").² A map illustrating the Chopper
22 City/KOP Safety Zone is attached as Exhibit A. The Chopper City/KOP Safety Zone is the geographic
23 area encompassed by the rectangle on the bottom half of the map. Defendant EDDY ROCK claims the
24 geographical areas bordered by, and including, Ellis Street to the North, Gough Street to the East, Turk
25

26 ¹ Expert Declaration of SFPD Officer Reese Burrows, ¶15, Expert Declaration of SFPD Officer David Do, ¶¶17, 50.

27 ² Do Expert Decl., ¶¶34-37.

1 Street to the South, and Webster Street to the West (hereinafter referred to as the "Eddy Rock Safety
2 Zone").³ In Exhibit A, the Eddy Rock Safety Zone is the geographic area encompassed by the rectangle
3 on the top half of the map.

4 Defendants CHOPPER CITY and KNOCK OUT POSSE are part of the "Uptown" alliance of
5 criminal street gangs, an alliance of gangs in the Western Addition that claim territory west of Fillmore
6 Street.⁴ Defendant EDDY ROCK is a "Downtown" gang, Western Addition gangs that claim territory east
7 of Fillmore Street.⁵ At the present time, CHOPPER CITY, KNOCK OUT POSSE, and all of the gangs in
8 the "Uptown" alliance are at war with EDDY ROCK.⁶

9 Since 2002, Defendants and their members have created and maintained a public nuisance within
10 each of their Safety Zones that persistently diminishes the quality of life and threatens the health and
11 safety of the law-abiding citizens who live and work in the Western Addition.⁷ This nuisance is
12 documented and proved by all officer and expert witness declarations filed with this ex parte application.
13 Defendants maintain the public nuisance in order to promote their drug selling enterprise, to stake claim to
14 their turf, to intimidate those who live and work in their turf, and to promote their reputation for violence.⁸
15 Defendants' public nuisance conduct allows their members to freely run their drug enterprise in each
16 Safety Zone with little or no competition from rival gangs and with little fear that their conduct will be
17 reported to police.⁹

18 Defendants' members conduct their illegal drug sales in public areas, which interferes with
19 pedestrian traffic and diminishes the quality of life in each Safety Zone.¹⁰ Members who sell drugs will

21 ³ Burrows Expert Decl., ¶30.

22 ⁴ Burrows Expert Decl., ¶14, Do Expert Decl., ¶¶16, 33, 67 .

23 ⁵ Burrows Expert Decl., ¶14, Do Expert Decl, ¶16.

24 ⁶ Burrows Expert Decl., ¶14, Do Expert Decl, ¶16.

25 ⁷ Burrows Expert Decl., ¶¶ 16-19, 30, 55, Do Expert Decl, ¶¶18-20, 28, 34-37, 51-54, 62, 82-85.

26 ⁸ Burrows Expert Decl., ¶¶ 16-19, 30, 55, Do Expert Decl, ¶¶18-20, 28, 34-37, 51-54, 62, 82-85.

27 ⁹ Burrows Expert Decl., ¶30, Do Expert Decl., ¶¶28, 34-37, 62 .

28 ¹⁰ Burrows Expert Decl., ¶¶56-58; Do Expert Decl., ¶¶82-86; *see e.g.*, Declaration of Scott Warnke, ¶¶6-7;
Declaration of David Do, ¶¶12-16; 40-47.

1 often carry firearms.¹¹ This increases the likelihood that a violent act will be committed in the area.¹²

2 Defendants' drug trade within each Safety Zone has also led to loitering, litter, noise, verbal altercations,
3 physical altercations and public use of illegal drugs as drug users converge on the area.¹³

4 In addition to drug sales, Defendants' members also commit the serious and violent felonies listed
5 in California Penal Code section 186.22(e) such as shootings, possession of weapons, and burglaries.¹⁴
6 Defendants' members commit these crimes against rival gang members, perceived rival gang members
7 and innocent, law-abiding members of the community.¹⁵ Defendants then ensure that they will escape
8 prosecution by law enforcement by threatening victims and witnesses should they cooperate with law
9 enforcement.¹⁶

10 Defendants' members further interfere with the quality of life of those who live and work in the
11 Safety Zones by loitering in intimidating groups on the streets, sidewalks, pathways and courtyards of
12 each Safety Zone.¹⁷ Defendants' members persistently trespass on private property, parks, playgrounds,
13 convenience stores, courtyards, and common areas of public housing.¹⁸ Defendants' members also hide
14 and store firearms in the backyards of, and inside, residences in the Safety Zones.¹⁹ Defendants also hide
15 and store firearms in public areas accessible to children.²⁰

16 ¹¹ Burrows Expert Decl., ¶57, Do Expert Decl., ¶84.

17 ¹² Burrows Expert Decl., ¶57, Do Expert Decl., ¶84.

18 ¹³ Burrows Expert Decl., ¶56, Do Expert Decl., ¶83.

19 ¹⁴ Burrows Expert Decl., ¶¶55, 59; Do Expert Decl., ¶¶ 82, 85, 87, 91; *see e.g.*, Declaration of Tim Brophy, ¶¶3-4,
20 Declaration of Tracy Boes, ¶¶15-18; Declaration of Darryl Rodgers, ¶¶3-4; Declaration of Patrick Zapponi, ¶¶6-9; Declaration
of Kirk Edison, ¶¶12-18; Declaration of Dante Giovannelli, ¶¶5-9; Declaration of David Goff, ¶¶10-19; Declaration of Luke
Martin, ¶7-11.

21 ¹⁵ Burrows Expert Decl., ¶¶18-19, 30, 55; Do Expert Decl., ¶¶20, 28, 54, 62, 82, 87-91.

22 ¹⁶ Burrows Expert Decl., ¶30; Do Expert Decl., ¶¶28, 62, 87; *see e.g.*, Declaration of Thomas Minkel, ¶3; Declaration
of Reese Burrows, ¶¶38-39, 42-44, ¶¶42-44; Declaration of Torrie Barnes, ¶¶3-9.

23 ¹⁷ Burrows Expert Decl., ¶30; Do Expert Decl., ¶¶28, 62; *see e.g.*, Declaration of Jeffrey Aloise, ¶5; Declaration of
24 Officer Kevin O'Leary, ¶¶3-9; Officer Carl Fabbri, ¶¶8-11.

25 ¹⁸ Do Expert Decl., ¶85; *See e.g.*, Declaration of Ferdinand Dimapasoc, ¶¶3-4; Declaration of Officer Carl Fabbri,
¶¶12-13; Declaration of Sergeant Frederick Schiff, ¶¶15-20; Declaration of Officer Paul Davies, ¶¶3-5.

26 ¹⁹ Do Expert Decl., ¶¶30, 64; *See e.g.*, Declaration of Sean Griffin, ¶¶17, 40-41; Burrows Decl., ¶¶46-49; Do Decl.,
¶¶55-57.

27 ²⁰ *See e.g.*, Burrows Decl., ¶7; Do Decl., 37-39; Griffin Decl., ¶¶45-46.

1 Defendants' members further stake out and control each gang's turf by vandalizing property with
2 gang graffiti.²¹ CHOPPER CITY and KOP'S graffiti are scattered throughout the Chopper City/KOP
3 Safety Zone.²² Likewise, EDDY ROCK'S graffiti is scattered throughout the Eddy Rock Safety Zone.²³

4 The conditions within the two Safety Zones have become particularly intolerable in 2007 as the
5 deadly rivalry between the "Uptown" alliance and Defendant EDDY ROCK has intensified. In 2007
6 alone, this rivalry is the suspected cause of at least three homicides and numerous shootings within the
7 two Safety Zones.²⁴

8 The activities of Defendants CHOPPER CITY Criminal Street Gang, EDDY ROCK Criminal
9 Street Gang, KNOCK OUT POSSE Criminal Street Gang and their members are documented in greater
10 detail in the Expert Declaration of SFPD Officer David Do, the Expert Declaration of SFPD Officer Reese
11 Burrows, and in over 100 Declarations of San Francisco Police Officers, filed herewith. These
12 Declarations describe and establish the ongoing public nuisance perpetrated by Defendants in the two
13 Safety Zones.

14 For these reasons, Plaintiff requests that this Court issue an Order to Show Cause why a
15 Preliminary Injunction should not be issued to enjoin Defendants CHOPPER CITY Criminal Street Gang,
16 EDDY ROCK Criminal Street Gang, and KNOCK OUT POSSE Criminal Street Gang and their members
17 from committing crimes and other public nuisance activities within each of their designated Safety Zones.
18 In addition, the Plaintiff asks that this Court issue an order allowing service on designated members of
19 Defendants CHOPPER CITY, EDDY ROCK and KNOCK OUT POSSE and service by publication of the
20 Order to Show Cause Re: Preliminary Injunction. Finally, at the Order to Show Cause hearing, Plaintiff
21 requests that this Court issue a Preliminary Injunction against the CHOPPER CITY criminal street gang,
22 EDDY ROCK criminal street gang and KNOCK OUT POSSE criminal street gang.

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24
25 ²¹ Burrows Expert Decl., ¶¶36-39, Do Expert Decl, ¶¶39-44, 71-76.

26 ²² Do Expert Decl., ¶¶39-44, 71-76; Declaration of Kevin Murray, ¶¶7, 14.

27 ²³ Burrows Expert Decl., ¶¶36-44; Aloise Decl., ¶4.

28 ²⁴ Burrows Expert Decl., ¶63, pp. 25-26; Do Expert Decl, ¶¶91, pp. 41-43.

1 **LEGAL ARGUMENT**

2 **I. INJUNCTIVE RELIEF IS THE APPROPRIATE REMEDY TO ABATE THE**
3 **ONGOING PUBLIC NUISANCE PERPETRATED BY DEFENDANTS IN THE TWO**
4 **SAFETY ZONES.**

5 The conduct and activities of the CHOPPER CITY criminal street gang, the EDDY ROCK
6 criminal street gang, and the KNOCK OUT POSSE criminal street gang and all their members in the
7 Western Addition neighborhood of San Francisco are a statutory public nuisance. Plaintiff has filed the
8 above-entitled action in order to abate this nuisance. California Code of Civil Procedure section 731
9 specifically authorizes a City Attorney to bring such an action. Due to the recent rise in violent crimes
10 perpetrated by Defendants, Plaintiff now seeks injunctive relief prior to trial in order to abate the public
11 nuisance.

12 **A. Legal Standard For Injunctive Relief Against Criminal Street Gangs.**

13 California Code of Civil Procedure section 527 authorizes a Court to issue an Injunction prior to
14 trial "if sufficient grounds exist therefor." These grounds include circumstances where a party may suffer
15 great or irreparable injury or where pecuniary compensation would fail to provide adequate relief. CCP
16 §§526(a)(2), 526(a)(4). In addition, California Business and Professions Code Section 17203 authorizes
17 the City Attorney to bring an action for injunctive relief in order to enjoin unfair or unlawful business
18 practices. Bus. & Prof. Sec. §17203.

19 The decision to grant a preliminary injunction rests in the sound discretion of the Court.
20 *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527. In exercising its discretion, the Court must
21 consider two factors: (1) whether there is a reasonable probability that plaintiff will prevail on the merits
22 at trial, and (2) whether the denial of the injunction would cause plaintiff more harm than the defendant
23 would suffer if the injunction were granted, and then "exercise its discretion 'in favor of the party most
24 likely to be injured.'" *Robbins v. Superior Court of Sacramento County* (1985) 38 Cal.3d 199, 205; *See*
25 *also People v. Acuna* (1997) 14 Cal.4th 1090, 1109.

26 Courts have specifically sanctioned injunctive relief against criminal street gangs to abate the
27 public nuisance caused by gang conduct. *Acuna*, 14 Cal.4th at 1102, 1125; *see also People v. Englebrecht*
28 (2001) 88 Cal.App.4th 1236, 1263; *In re Englebrecht* (1998) 67 Cal.App.4th 486, 493-96. Before

1 injunctive relief can be provided, however, the moving party must show that: (1) the activities and conduct
2 of the gang "can be brought within the terms of the statutory definition of public nuisance" and (2) the
3 nuisance is "substantial and unreasonable". *In re Englebrecht, supra*, 67 Cal.App.4th at 492; *see also*
4 *Acuna, supra*, 14 Cal.4th at 1104-05.

5 **B. Plaintiff Will Prevail On The Merits At Trial.**

6 In *Englebrecht*, the Court declared that a party seeking a gang injunction must prove its case by
7 clear and convincing evidence. *Englebrecht, supra*, 88 Cal.App.4th at 1257 & n.7. The evidence in the
8 present case more than satisfies this burden of proof.

9 Plaintiff has alleged two causes of action against Defendants CHOPPER CITY, EDDY ROCK,
10 and KNOCK OUT POSSE. The First Cause of Action alleges that Defendants are criminal street gangs,
11 and their conduct constitutes a public nuisance under California Penal Code section 186.22a (a) and
12 California Civil Code section 3479. The Second Cause of Action alleges that Defendants' conduct
13 violates California Business and Professions Code sections 17200-17210. At trial, plaintiff will present
14 more than sufficient evidence to establish both causes of action.

15 **1. Defendants Are Criminal Street Gangs With Documented Gang Members.**

16 California Penal Code § 186.22 defines a criminal street gang as a group of three or more persons,
17 having a common name or common identifying sign or symbol, having as one its primary activities the
18 commission of one or more of the crimes listed under 186.22(e),²⁵ and whose members individually or
19 collectively engage in, or have engaged in, a pattern of criminal gang activity. For purposes of a civil
20 gang abatement action, however, plaintiff need only establish that one of the primary activities of the gang
21 is the "commission of the acts constituting the public nuisance" and not the crimes listed under 186.22.
22 *Englebrecht, supra*, 88 Cal.App.4th at 1261. Nevertheless, in the present case, plaintiff has more than
23 sufficient evidence to establish that each of the Defendants qualifies as a criminal street gang under the
24 more rigorous standard set in Penal Code § 186.22.

25 _____
26 ²⁵ The offenses listed in Penal Code § 186.22(e) include: assault with a deadly weapon or by force likely to cause
27 great bodily injury; robbery; homicide or manslaughter; sale, possession for sale, transportation or manufacture of controlled
28 substances; witness or victim intimidation; grand theft; burglary; carjacking; possession of a concealable firearm; terrorist
threats; possession of a firearm by a felon; carrying a concealed firearm; and carrying a loaded firearm.

1 Defendants CHOPPER CITY, EDDY ROCK, and KNOCK OUT POSSE are each comprised of at
2 least twenty adult individuals who claim a common gang name and symbols.²⁶ Defendant CHOPPER
3 CITY is also known as “Choppa City”.²⁷ CHOPPER CITY members will flash the letter “C” with their
4 hands to identify themselves.²⁸ Defendant EDDY ROCK is also known by the names “Paypa Bound”,
5 “OC”, and “1200 Block”.²⁹ EDDY ROCK members will flash a diamond symbol with their hands or the
6 letter “E” with their fingers to identify themselves.³⁰ Defendant KNOCK OUT POSSE is also known by
7 the name “KOP” and “KO”.³¹ KOP members will flash what is commonly referred to as the “okay” hand
8 sign or a variation of the “okay” hand sign with their fingers to identify themselves.³² Members of each of
9 the three Defendant gangs routinely vandalize property in each of their claimed territories with graffiti
10 bearing each gang’s name and symbols.³³

11 One of the primary activities of each Defendant is to conduct drug sales and a host of other, often
12 violent, crimes listed under section 186.22(e) such as burglaries, possession of firearms, and shootings.³⁴
13 All of these crimes are committed for the purpose of promoting each Defendant gang’s drug enterprise,
14 staking their claim to their territory, and asserting their strength against rival gangs.³⁵ The members of
15 each Defendant who will be subject to this Injunction are documented members who have engaged in a
16 pattern of criminal gang activity. The documented members’ activities are described in detail in over 100
17 Declarations of officers of the San Francisco Police Department and in the Expert Declarations of Officer
18

19 ²⁶ Burrows Expert Decl., ¶¶20, 25, Do Expert Decl, ¶¶21, 26, 55, 60.

20 ²⁷ Do Expert Decl., ¶¶16, 61.

21 ²⁸ Do Expert Decl., ¶¶77-79.

22 ²⁹ Burrows Expert Decl., ¶26.

23 ³⁰ Burrows Expert Decl., ¶¶45-49.

24 ³¹ Do Expert Decl., ¶¶16, 27.

25 ³² Do Expert Decl., ¶¶45-47

26 ³³ Burrows Expert Decl., ¶¶36-44; Do Expert Decl., ¶¶39-44, 71-76; Murray Decl., ¶¶7, 14; Burrows Decl., ¶60.

27 ³⁴ Burrows Expert Decl., ¶¶18-19, 55-59; Do Expert Decl., ¶¶18-20, 28, 51-54, 62, 82-91; *see e.g.*, Declaration of Tim
28 Brophy, ¶¶3-4, Declaration of Tracy Boes, ¶¶15-18; Declaration of Darryl Rodgers, ¶¶3-4; Declaration of William Scott, ¶¶4-
10; Griffin Decl., ¶¶21-26; Zapponi Decl., ¶¶6-9; Declaration of Lionel Lucas, ¶¶3-12.

³⁵ Burrows Expert Decl., ¶¶18-19, 55-56; Do Expert Decl., ¶¶18-20; 53-54; 82-85.

1 David Do and Officer Reese Burrows.³⁶ In sum, the evidence in the present case clearly establishes that
2 each Defendant is a criminal street gang, as defined by Penal Code section 186.22(f).

3 **2. Defendants' Primary Activities Constitute A Public Nuisance Under Both**
4 **Penal Code Section 186.22a(a) And California Civil Code Section 3479.**

5 Penal Code section 186.22a(a) describes a public nuisance as the following:

6 Every building or place used by members of a criminal street gang for the
7 purpose of the commission of the offenses listed in subdivision (e) of
8 Section 186.22 or any offense involving dangerous or deadly weapons,
9 burglary, or rape, and every building or place wherein or upon which that
10 criminal conduct by gang members takes place

11 California Civil Code section 3479 defines a public nuisance as "anything which is injurious to
12 health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to
13 the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment
14 of life or property" Defendants' activities within each of the designated Safety Zones more than
15 satisfies both statutory definitions of a public nuisance.

16 As described in greater detail in the Statement of Facts, within each of their designated Safety
17 Zones, members of Defendants CHOPPER CITY, EDDY ROCK, and KNOCK OUT POSSE conduct
18 drug sales and commit a host of other crimes to promote their drug trade, stake their claim to their
19 territory, and assert their strength to rival gang members and the community.³⁷

20 Defendants' members conduct their illegal drug sales in public spaces, which interferes with
21 pedestrian traffic and diminishes the quality of life in each Safety Zone.³⁸ This drug trade leads to violent
22 crimes as well as other nuisance activity, as gang members use violence to maintain their control of the
23 drug trade and drug users converge on the area. The violent crimes committed by Defendants' member

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25 ³⁶ Burrows Expert Decl., ¶¶65-91; Do Expert Decl., ¶¶93-125.

26 ³⁷ Burrows Expert Decl., ¶¶18-19, 55-56; Do Expert Decl., ¶¶18-20; 51-54; 82-85.

27 ³⁸ Burrows, Decl., ¶¶56-57; Do Expert Decl., ¶¶83-84; *see e.g.*, Warnke Decl., ¶¶6-7; Declaration of Officer Anthony
28 Damato, ¶¶10-11; Do Decl., ¶¶12-16; 40-47.

1 include the serious and violent felonies listed in California Penal Code section 186.22(e) such as
2 shootings, possession of weapons, and burglaries.³⁹

3 Defendants' members further interfere with the quality of life of those who live and work in the
4 Safety Zones by loitering in intimidating groups on the streets, sidewalks, pathways and courtyards of
5 each Safety Zone.⁴⁰ Defendants' members also hide and store firearms in the backyards of, and inside,
6 residences in the Safety Zones.⁴¹ Defendants also hide and store firearms in public areas accessible to
7 children.⁴² Defendants' members further stake out and control each gang's turf by vandalizing property
8 with gang graffiti.⁴³

9 In short, all of these activities are "injurious to the health" of the law-abiding members who live
10 and work in the Western Addition neighborhood of San Francisco and "interfere with the comfortable
11 enjoyment of life or property ". Defendants' activities, therefore, clearly qualify as a public nuisance
12 under both statutory definitions.

13 3. Defendants' Public Nuisance Conduct Is "Substantial And Unreasonable."

14 In addition to showing that Defendants' conduct constitutes a public nuisance, Plaintiff must also
15 show that the nuisance is "substantial and unreasonable." *In re Englebrecht, supra*, 67 Cal.App.4th at 492.
16 The California Supreme Court has defined "substantial" as "'definitely offensive, seriously annoying, or
17 intolerable'" and "unreasonable" as when the harm inflicted by the activities outweighs any social utility.
18 *Acuna, supra*, 14 Cal.4th at 1105.

19 In *Acuna*, the Court was presented with evidence that the gang in question had engaged in drug
20 dealing, taken over public streets and sidewalks, possessed weapons and firearms, committed assaults,
21 committed shootings, committed thefts, trespassed on private property and vandalized property with gang
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23 ³⁹ Burrows Expert Decl., ¶55, 59; Do Expert Decl., 82, 87, 91; *see e.g.*, Brophy Decl., ¶¶3-4, Boes Decl., ¶¶15-18;
Rogers Decl., ¶¶3-4; Zapponi Decl., ¶¶6-9; Edison Decl., ¶¶12-18; Giovannelli Decl., ¶¶5-9; Goff Decl., ¶¶10-19.

24 ⁴⁰ Burrows Expert Decl., ¶30; Do Expert Decl., ¶¶28, 62; *see e.g.*, Aloise Decl., ¶5; O'Leary Decl., ¶¶3-9; Fabbri Decl.,
25 ¶¶8-11.

26 ⁴¹ Do Expert Decl., ¶¶30, 64; *See e.g.*, Griffin Decl., ¶¶17, 40-41; Burrows Decl., ¶¶46-49; Do Decl., ¶¶55-57.

27 ⁴² *See e.g.*, Burrows Decl., ¶7; Do Decl., 37-39; Griffin Decl., ¶¶45-46.

28 ⁴³ Burrows Expert Decl., ¶¶36-39; Do Expert Decl., ¶¶39-44, 71-76; Aloise Decl., ¶4; Murray Decl., ¶¶7, 14.

1 graffiti. The California Supreme Court applied the "substantial and unreasonable" standard to the facts in
2 *Acuna* and found the evidence sufficient to issue the Injunction. *Acuna, supra*, 14 Cal.4th at 1125-1126.

3 The facts in the present case are nearly identical to the facts in *Acuna*. Within the two Safety
4 Zones, members of Defendants CHOPPER CITY, EDDY ROCK, and KNOCK OUT POSSE have
5 engaged in drug dealing, taken over public streets and sidewalks, possessed weapons and firearms,
6 committed shootings, committed thefts, trespassed on private property and vandalized property with gang
7 graffiti.⁴⁴ Like the gang in *Acuna*, Defendants have created the same type of public nuisance in each of
8 their Safety Zones. Consequently, the public nuisance activities of Defendants are clearly “substantial and
9 unreasonable.”

10 **4. Defendants’ Drug And Crime Enterprise Is In Violation Of California**
11 **Business And Professions Code Sections 17200-17210.**

12 California Business and Professions Code § 17200 prohibits unfair and unlawful business
13 practices. Defendants’ members have violated this statute by engaging in an illegal drug enterprise within
14 each of their Safety Zones. Defendants’ members routinely sell controlled substances within each Safety
15 Zone to generate income for their gang.⁴⁵ Along with their drug sales, Defendants also commit violent
16 crimes against rival gang members or perceived rivals to assert their strength and to keep rivals out of
17 their territory.⁴⁶ Defendants also threaten or harass individuals who call the police or cooperate with
18 police to avoid being prosecuted by law enforcement.⁴⁷ As a result, each Defendant gang’s drug
19 enterprise thrives in their respective territories because of little or no competition from rivals and no fear
20 of being reported to the police. In other words, Defendants benefit financially as a direct result of their
21 criminal enterprise. Such a windfall is in violation of Business and Professions Code § 17200.

22 _____
23 ⁴⁴ See e.g., Brophy Decl., ¶¶3-4, Boes Decl., ¶¶15-18; Rodgers Decl., ¶¶3-4; Aloise Decl., ¶¶4-5; Warnke Decl., ¶¶6-
24 7; Dimapasoc Decl., ¶¶3-4; Do Decl., ¶¶12-16; 40-47; Zapponi Decl., ¶¶6-9; Edison Decl., ¶¶12-18; Giovannelli Decl., ¶¶5-9;
25 Barnes Decl., ¶¶3-9; Fabbri Decl., ¶¶8-11; Schiff Decl., ¶¶15-20; Murray Decl., ¶¶7, 14.

26 ⁴⁵ Burrows Expert Decl., ¶¶56-57; Do Expert Decl., ¶¶82-86; see e.g., Boes Decl., ¶19; Do Decl., ¶¶12-16; 40-47;
27 Griffin Decl., ¶¶34-36; Scott Decl., ¶¶4-10; Damato Decl., ¶¶10-11.

28 ⁴⁶ Burrows Expert Decl., ¶¶56-57; Do Expert Decl., ¶¶20, 54, 82-84.

⁴⁷ Burrows Expert Decl., ¶30; Do Expert Decl., ¶¶28, 62, 87; see e.g. Burrows Decl., ¶¶38-39, 42-44; Barnes Decl.,
¶¶3-9

1 **C. The Harm To The Community Caused By Defendants’ Nuisance-Causing Conduct**
2 **Outweighs The Gangs’ Right To Commit The Conduct.**

3 Once Plaintiff has established that it is reasonably likely to prevail on the merits at trial, this Court
4 must weigh the equities. This Court must determine whether the harm to the law-abiding individuals who
5 live and work in the Safety Zones if the Injunction is denied outweighs the harm to the Defendants if the
6 Injunction is granted. Faced with this identical situation, the court in *Acuna* found in favor of the law-
7 abiding individuals. *Acuna, supra*, 14 Cal.4th at 1105. The Court stated:

8 To hold that the liberty of the peaceful, industrious residents [in the gang’s
9 territory] must be forfeited to preserve the illusion of freedom for those
10 whose ill conduct is deleterious to the community as a whole is to ignore
11 half of the political promise of the Constitution and the whole of its sense.
12 *Id.*, at 1125.

13 Based on the facts in the present case, this Court should make the same finding. Should this Court
14 fail to grant an Injunction, it is undisputed that the law-abiding citizens who live and work within the two
15 Safety Zones will continue to be victimized by Defendants and remain de facto prisoners in their own
16 neighborhood. On the other hand, if this Court were to grant an Injunction prohibiting Defendants’
17 members from engaging in nuisance-causing conduct, any harm to Defendants would be minimal. Other
18 than the prohibition against loitering and associating with other gang members, Defendants’ members
19 should not be affected by the Injunction so long as they obey all laws. Moreover, the Injunction is limited
20 to a small geographical area. The Chopper City/KOP Safety Zone is a 6 square block area; the Eddy Rock
21 Safety Zone is an 8 square block area. Defendants' conduct outside of the two Safety Zones would remain
22 unaffected.

23 In balancing the equities, the scale clearly tips in favor of the law-abiding individuals of the
24 community. In sum, the facts in the present case clearly support the issuance of an Injunction against
25 Defendants.

26 **II. THE SPECIFIC PROVISIONS OF THE INJUNCTION ARE NECESSARY TO ABATE**
27 **THE PUBLIC NUISANCE CAUSED BY DEFENDANTS.**

28 The proposed Injunction sets forth new "rules" for public behavior for the CHOPPER CITY
criminal street gang, the EDDY ROCK criminal street gang and the KNOCK OUT POSSE criminal street

1 gang and their members that are necessary to abate the public nuisance and to protect the innocent citizens
2 within the two Safety Zones. The rules are proper restrictions on the conduct of these gangs. "Activities
3 of an association which deprive third parties of their lawful rights fall outside the constitutional pale. The
4 commission of crimes is the most apparent manifestation of such unprotected conduct. The performance
5 of acts that constitute a civil nuisance is another." *People v. Lopez* (1998) 66 Cal.App.4th 615, 632, *citing*
6 *Acuna*, 14 Cal.4th at 1112.

7 The proposed Injunction provisions would only apply to Defendants and their members *inside of*
8 the narrowly defined, two Safety Zones. The requested injunctive provisions are narrowly tailored to limit
9 the gangs' activities only so much as needed to protect the law-abiding individuals who live and work in
10 the two Safety Zones. In addition, each requested injunction provision only seeks to enjoin this criminal
11 and nuisance behavior or the precursors to such behavior.

12 All of the declarations from individual police officers as well as the gang expert declarations of
13 Officer David Do and Officer Reese Burrows that are filed with this motion document the harm caused by
14 the gang members' activities in the Safety Zones. Within the two Safety Zones, gang members intimidate,
15 threaten and harass community members, assault rival gang members and community members, possess
16 dangerous weapons, commit acts of graffiti to mark the gang's claimed territory and intimidate residents,
17 possess illegal drugs for sale, sell illegal drugs, and loiter with intent to commit drug offenses, trespass on
18 private property, flash gang signs and symbols to intimidate rival gang members and community members
19 and further solidify the gangs' claimed turf, gather with other gang members to intimidate the community
20 and rival gang members, conspire with other gang members, and commit crimes with other gang
21 members.⁴⁸

22 The requested injunctive provisions are all necessary to provide equitable relief from the criminal
23 and nuisance behavior committed by Defendants and their members. Even if the gang members were to
24

25 ⁴⁸ Burrows Expert Decl., ¶¶55-59; Do Expert Decl., ¶¶ 28, 32, 39-47, 62, 66, 71-79, 82-91; *see e.g.*, Boes Decl., ¶15-
26 19, Burrows Decl., ¶¶38-39, 58, 60-61; Brophy Decl., ¶¶3-4; Dimapasoc Decl., ¶¶3-4; Damato Decl., ¶9; Declaration of
27 Michael Nelson, ¶¶ 10-12, 27; Barnes Decl., ¶¶3-9; O'Leary Decl., ¶¶3-9; Fabbri Decl., ¶¶12-13; Lucas Decl., ¶¶3-12; Do
28 Decl., ¶¶12-16; 40-47; Griffin Decl., ¶¶21-26; Zapponi Decl., ¶¶6-9; Declaration of Britt Elmore, ¶¶5-19; Scott Decl., ¶¶4-10;
Declaration of Mark Moreno, ¶¶4-12.

1 claim they have a "right" to walk the streets within the Safety Zones with other known gang members, or
2 do any other activity that would be restricted by this injunction, they misunderstand the concept of
3 *equitable* relief. The gang members have enjoyed these rights in the past and have grossly abused them.
4 It is precisely because they have they abused these rights that this injunction is necessary. *See People v.*
5 *Conrad* (1997) 55 Cal.App.4th 896, 902. Moreover, each provision of the injunction is specifically linked
6 to the illegal and nuisance activity committed by the CHOPPER CITY, EDDY ROCK and KNOCK OUT
7 POSSE criminal street gangs. *See Acuna*, 14 Cal.4th at 1110 (non-association provision of injunction is
8 proper because the gang's activities in the proposed safety zone consist mainly of drug trafficking and
9 securing control of the community through systematic acts of intimidation and violence.) It is time that
10 the CHOPPER CITY, EDDY ROCK and KNOCK OUT POSSE gang members be held accountable for
11 their past behavior and the community's rights be upheld.

12 As California's Supreme Court noted, the community's members also have rights, and the rights of
13 the good people trapped in fear should not be less than the "rights" of gang members to run amok and
14 commit crimes unrestrained throughout the two Safety Zones. *Acuna*, 14 Cal.4th at 1102.

15 **III. SERVICE OF PROCESS ON A CRIMINAL STREET GANG CAN BE EFFECTUATED**
16 **BY SERVING MEMBERS OF THE GANG.**

17 California Code of Civil Procedure section 369.5(a) states that an unincorporated association may
18 be sued in the name by which it is known. Defendants CHOPPER CITY, EDDY ROCK, and KNOCK
19 OUT POSSE each qualify as unincorporated association pursuant to *Barr v. United Methodist Church*
20 (1979) 90 Cal.App.3d 259, *cert. denied*, 444 U.S. 973. Like the group in *Barr*, Defendants' members
21 share a common purpose and function under a common name in circumstances where the group should be
22 recognized as a legal entity. *Barr v. United Methodist Church* (1979) 90 Cal.App.3d 259, 266-67. The
23 California Supreme Court recognized in *Acuna* that a criminal street gang is amenable to suit as an entity
24 because "it was the gang itself, acting through its membership, that was responsible for creating and
25 maintaining the public nuisance in [the neighborhood]." *Acuna, supra*, 14 Cal.4th at 1125 (*dicta*).

26 California Code of Civil Procedure section 416.60 authorizes service of process on an
27 unincorporated association through the entity's agent of process registered with the Secretary of State, the
28

1 entity's officers or general manager, or as authorized by Corporations Code section 18220. Code Civ.
2 Proc. §416.60(a)-(c). Section 18220 provides that, by order of court, service may be effected on an
3 unincorporated association which has not designated an agent for service, by service on a designated
4 member of that association, followed by mailing to the entity's last known address. Corp. Code, § 18220.
5 Before a Court can authorize such service, however, the party seeking service must show that it is unable
6 to serve the entity personally, by substitute service, or by mail, after exercising reasonable diligence.
7 Plaintiff can make this showing.

8 After exercising reasonable diligence, Plaintiff has been unable to locate a registered agent, a
9 mailing address or “place of business” for Defendants.⁴⁹ In her declaration, Investigator Catherine Garza
10 recites her investigation of databases and other sources in her fruitless attempt to locate a mailing address,
11 an agent of process, or any other information regarding Defendants CHOPPER CITY, EDDY ROCK, and
12 KNOCK OUT POSSE that might provide an address of record or agent for service of process.⁵⁰
13 Moreover, Defendants, like most criminal street gangs, lack a formal organization and do not have formal
14 officers or managers who can be served.⁵¹ In short, Plaintiff has no method of serving Defendants
15 personally, by substitute service or by mail. Service as authorized by Corporations Code section 18220,
16 therefore, should be allowed in the present case. This method of service is standard practice in gang
17 injunction cases.⁵²

18 When effecting service under Corporations Code section 18220, the party seeking the service must
19 designate the individual member or members in advance. Plaintiff has designated for service a total of 45
20 gang members from the three Defendant gangs. A list of all of the designated members is attached as
21 Exhibit B. These members are the documented members of each gang.⁵³ Plaintiff anticipates that at least
22

23 ⁴⁹ Declaration of Catherine A. Garza, ¶¶3-9.

24 ⁵⁰ Garza Decl., ¶¶3-9.

25 ⁵¹ Garza Decl., ¶¶3-9; Burrows Expert Decl., ¶21; Do Expert Decl., ¶¶22, 56.

26 ⁵² See Order to Show Cause Re: Preliminary Injunction, *People v. Oakdale Mob*, San Francisco Superior Court Case
27 No. 456-517 (entered September 29, 2006); Order to Show Cause Re: Preliminary Injunction, *People v. Crazy Ass Mexicans,*
28 *aka KAM*, Los Angeles Superior Court Case NO. BC282629 (entered October 4, 2002).

⁵³ Burrows Expert Decl., ¶¶65-91; Do Expert Decl., ¶¶93-125.

1 ten members will be served. In addition, Plaintiff requests that the Court waive the requirement that a
2 copy of the documents served also be mailed to the last known address of Defendants. As explained
3 previously, Defendants have no established or fixed address to which such documents could be mailed.⁵⁴

4 In addition to service on the individual gang members, in order to ensure that as many gang
5 members as possible are given notice, Plaintiff requests that the Court permit Plaintiff to publish notice of
6 the Order to Show Cause hearing in the San Francisco Chronicle, once a week, for four consecutive
7 weeks.

8 **CONCLUSION**

9 "The state has not only a right to 'maintain a decent society,' but an obligation to do so."
10 *Acuna, supra*, 14 Cal.4th at 1102 (citations omitted). Plaintiff cannot stand by and allow Defendants
11 CHOPPER CITY, EDDY ROCK and KNOCK OUT POSSE Criminal Street Gangs to hold an entire
12 neighborhood hostage by their criminal and nuisance behavior. Defendants' conduct, therefore, must be
13 abated to allow the law-abiding individuals of both Safety Zones to lead lives free from fear and violence.
14 Consequently, Plaintiff respectfully request this Court issue an Order to Show Cause (OSC) re:
15 Preliminary Injunction and issue an Order allowing service on designated members of Defendants
16 CHOPPER CITY, EDDY ROCK, and KNOCK OUT POSSE.

17 Dated: July 10, 2007

DENNIS J. HERRERA
City Attorney
ALEX G. TSE
Chief Attorney, Neighborhood and Resident Safety Division

21 By: _____
JILL CANNON

24 By: _____
JENNIFER E. CHOI
Deputy City Attorneys
Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

26 _____
27 ⁵⁴ Garza Decl., ¶¶3-9.

1 **LIST OF GANG MEMBERS DESIGNATED FOR SERVICE FOR**
2 **EACH DEFENDANT GANG**

3 **DEFENDANT CHOPPER CITY CRIMINAL STREET GANG**

- 4 • DENNIS ANDERSON
5 • DEON ANDERSON
6 • BYRON CHEEVES
7 • DERON CHEEVES
8 • CLARENCE COOK
9 • JAMAL GAINES
10 • DWIGHT HART
11 • ANTOINE JOHNSON
12 • MAKIA JOHNSON
13 • RICKY ROUNDS
14 • CARNELL TAYLOR
15 • KARWARN THORN
16 • SALA THORN

17 **DEFENDANT EDDY ROCK CRIMINAL STREET GANG**

- 18 • DONTAE ALLEN
19 • ANDRE BERNARD
20 • MAURICE BIBBS
21 • DESHAWN CAMPBELL
22 • MAURICE CARTER
23 • RAYMOND DAVIS
24 • ROBERT HARVEY
25 • LESLIE HOWARD
26 • DONTAYE HUBBARD
27 • KETHAN HUBBARD
28 • STEVE JOHNSON
29 • DELORIAN LEE
30 • DION MARTIN
31 • PARIS MOFFETT
32 • DELSHAWNTE SMITH
33 • DEMETRIUS SMITH
34 • JONATHAN SMITH
35 • HANNIBAL THOMPSON
36 • DEANDRE WATSON

37 **DEFENDANT KNOCK OUT POSSE CRIMINAL STREET GANG**

- 38 • JUAN ALLEN
39 • DANA BALL
40 • FLOYD BARROW
41 • KILAMANJARO BELL
42 • LAVEAUX DEROSANE
43 • JELVON HELTON
44 • BRIAN HILL
45 • DARRELL LUCKETT
46 • TERRY LUCKETT
47 • MARCUS MAYS
48 • ROBERT MAYS
49 • GARY OWENS